

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date: March 10, 2016

To: The Commission
(Meeting of March 17, 2016)

From: Helen M. Mickiewicz, Asst. General Counsel
Daren Gilbert, Program Manager, Rail Transit Safety Branch
Patrick S. Berdge, Principal Counsel

Subject: Federal Transit Administration's Notice of Proposed Rulemaking
(*Public Transportation Agency Safety Plan*), 49 C.F.R. Part 673, Docket
No. FTA-2015-0021, RIN 2132-AB23¹ and the related Notice of
Availability (Proposed *National Public Transportation Safety Plan*),
Docket No. FTA-2015-0017, RIN 2132-ZA04²

Docket No. FTA-2015-0021, RIN 2132-AB23
(Public Transportation Agency Safety Plan)

RECOMMENDATION: The California Public Utilities Commission ("CPUC") should file comments in response to the *Notice of Proposed Rulemaking* (Public Transportation Agency Safety Plan *NPRM*) released by the Federal Transit Administration ("FTA") on February 5, 2016. *Public comments must be filed by April 5, 2016.*

BACKGROUND: Congress directed FTA to establish a comprehensive Public Transportation Safety Program, which consists of several key elements: the National Public Transportation Safety Plan, authorized by 49 U.S.C. 5329(b); the Public Transportation Safety Certification Training Program, authorized by 49 U.S.C. 5329(c); the *Public Transportation Agency Safety Plan*, authorized by 49 U.S.C. 5329(d); and the State Safety Oversight Program, authorized by 49 U.S.C. 5329(e).

The proposed rules in this *NPRM* would add a new Part 673, "Public Transportation Agency Safety Plans," to Title 49 of the Code of Federal Regulations, to implement the

¹ See the Public Transportation Agency Safety Plan *NPRM*, 81 Fed. Reg. 6344 (Feb. 5, 2016).

² See 81 Fed. Reg. 6372 (Feb. 5, 2016).

requirements of 49U.S.C. 5329(d). California has a long-standing rail transit safety program that pre-dates the current Federal rail transit safety program.³ The CPUC was designated as the State Safety Oversight Agency (“SSOA”) in 1992 by then-Governor Pete Wilson.

The Rail Transit Safety Branch of the CPUC’s Safety and Enforcement Division (“SED”) is responsible for the CPUC’s rail transit safety oversight program, which includes oversight of 15 fixed guideway public transportation systems⁴ in California. Eight systems receive some level of Federal funding, but the remaining seven smaller systems receive no federal funds.

As a first step under MAP-21 and in accordance with congressional direction, FTA established certification requirements for SSOA’s. The CPUC rail transit safety program was one of only two in the nation that were initially certified based on its program and structure. Once certified, the CPUC was able to apply for SSOA grant funds, also made available under MAP-21 legislation. The CPUC grant application was approved July 2, 2015. The FTA’s annual funding of approximately \$2.8 million per year to the CPUC is contingent on the CPUC’s compliance with the FTA’s existing requirements and any new or revised requirements that arise from the various related FTA past and pending rulemakings.

This *NPRM* is part of a number of FTA rulemakings designed to carry out the congressional mandate of MAP-21 and the FAST Act.⁵ The CPUC will be impacted by and has interest in these rulemakings, and has provided comments on the State Safety Oversight Program NPRM (FTA-2015-0003), Public Transportation Safety Program NPRM (FTA-2015-0009), and Transit Asset Management NPRM (FTA-2014-0020). Staff also recommends that the CPUC provide comments on a Notice of Availability (NOA) for the National Public Transportation Safety Plan (FTA-2015-0017) provided *infra*.

SED has reviewed the current Public Transportation Agency Safety Plan *NPRM*, and recommends that the Commission authorize staff to prepare formal comments addressing the issues as outlined below for submittal in response to this *NPRM*.

³ Pub. Util. Code § 99152 enacted in 1978, provides the CPUC with safety oversight of public transit fixed-rail guideways.

⁴ The 15 fixed guideway public transportation systems in California are the Americana on Brand Trolley, Angel’s Flight Railway Company, Bay Area Rapid Transit District (BART), Getty Museum Automated People Mover, The Grove Trolley, Los Angeles County Metropolitan Transportation Authority, North County Transit District’s Sprinter, Oakland Airport Connector APM (BART), Port of Los Angeles Red Car Line, Sacramento International Airport Automated People Mover, Santa Clara Valley Transportation Authority, San Diego Trolley Inc., San Francisco Municipal Transportation Agency, San Francisco International Airport AirTrain Automated People Mover, and Sacramento Regional Transit District.

⁵ See <http://www.fta.dot.gov/map21/> and <http://www.fta.dot.gov/FAST.html>

DISCUSSION AND RECOMMENDATIONS: Staff recommends the CPUC file comments on the following specific issues regarding the FTA's proposed new rules.

FTA's Proposed Rules

I. DEFINITION OF CHIEF SAFETY OFFICER

The *NPRM*, 81 FR 6344 at page 6368, provides the following definition:

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

The Chief Safety Officer plays an extremely critical safety role, and as such must have extensive experience and training in public transportation safety. The qualifier "... adequately trained individual..." does not provide an adequate description of the minimum background needed to fill this position albeit dependent on the size and complexity of the agency. The definition of Chief Safety Officer should emphasize the minimum level of training and experience required for the position.

Staff recommends revising the definition of Chief Safety Officer to include the extensive experience and training required for this position.

II. DEFINITION OF STATE AND STATE SAFETY OVERSIGHT AGENCY

The *NPRM*, *supra* at page 6369, provides the following two definitions:

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

And,

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the

functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 674.

Proposed Section 673.11 (*NPRM, supra*, at page 6369) states:

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any transit agency that receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, and any small public transportation provider located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a particular transit agency that receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or a small public transportation provider, if that agency notifies the State that it will draft its own plan.

In the discussion section of the *NPRM, supra* on page 6357, the following comment is made with respect to the State:

Regarding the role of State Safety Oversight Agencies, *it would be a conflict of interest for those oversight authorities to be involved in the development of the Public Transportation Agency Safety Plans that they are charged with overseeing.* Consequently, FTA is not proposing that a State Safety Oversight Agency serve as an “Equivalent Authority” for purposes of this rule [emphasis added].

The NPRM includes several references to “state,” which the comment section explains are intended to apply to state agencies that are not State Safety Oversight Agencies (SSOAs). However, the proposed language of the rule does not include those clarifications. As a result, there may be confusion as to what state entity must draft an agency’s Public Transportation Agency Safety Plan (PTASP) if the Rail Transit Agency (RTA) fails to do so. Further, it is unclear to the CPUC what California state entity would prepare an RTA’s PTASP since the CPUC is most familiar with transit safety oversight. It is possible, of course, that another California state agency could produce a PTASP if the FTA provides a workable template or sample or if the California entity models the PTASP on other such safety plans created by RTAs in the state, if the FTA so chooses.

Staff recommends the term “state” should be unequivocally defined in a manner that the SSOAs may not draft, or otherwise develop, an RTA’s PTASP because of the existence of a potential conflict of interest.

Staff recommends adding at the end of this section “the *State Safety Oversight Agency cannot be involved in the development of the Public Transportation Agency Safety Plans they are charged with overseeing*”.

III. RECORD RETENTION

Proposed Section 673.33 (*NPRM, supra* at p. 6371), states:

In addition to any documents or records required elsewhere in this part, a transit agency must maintain records of the following items:

- (a) Safety risk mitigations developed in accordance with § 673.25;
- (b) Results from the transit agency’s safety performance assessments as required under § 673.27; and
- (c) Employee safety training taken for purposes of compliance with this part and the Public Transportation Agency Safety Training Certification Program.

Staff contends that these critical safety records should be retained for long periods of time to ensure that past corrective actions are easily obtainable and researchable. At present, there is no time period specified in the *NPRM*. Staff recommends that the retention period be a minimum of fifteen (15) years, or at least five triennial review cycles if the FTA chooses to specify a time period. This would allow these critical records to be immediately accessible to the agency, the FTA, and the SSOA. The agency records can be retained securely and economically through electronic means.

IV. GENERAL COMMENT ON THE ONGOING FTA RULEMAKINGS

As described in the “Background” Section of this memo, FTA has several rulemakings open at this time as part of its mandate to establish a comprehensive *Public Transportation Safety Program* (PTSP), 80 FR 48794. One of the proposed significant changes is the replacement of the existing requirement for RTA’s to have System Safety Program Plan (“*SSPP*”) with a new requirement to have a Transportation Agency Safety Plan (“*TASP*”).

Staff has had discussions with their counterparts in other state agencies, and there are differing interpretations of the proposed language on when the switch from SSPP to TASP will exactly take place.

While the PTSP is the subject of the Notice of Availability at 80 FR 48794, and not this *NPRM*, the proposed change in the NPTSP affects the safety plans proposed in this *NPRM*. Any confusion or misunderstanding on the timing of the switch from SSPP to TASP may create complications both for the regulated agencies, which may be confused as to which of the two rules sets they need to comply with, and for their regulators, the SSOAs, which may be confused as to which rules to enforce, the SSPP or the TASP.

In Docket No. FTA–2015–0003, RIN 2132–AB19, State Safety Oversight, 80 FR 1102, at page 11010, the FTA opined:

One of the most significant changes in State Safety Oversight under today's proposed rulemaking is the transition from the simple review-and-approval of the "*system safety program plan*" for a rail fixed guideway public transportation system, now codified at 49 CFR 659.17, to the more hands-on, proactive role for an SSOA in evaluating the effectiveness of a *Transit Agency Safety Plan* in proposed section 674.29. To reiterate, "Transit Agency Safety Plan" is a shorthand reference to the new Public Transportation Agency Safety Plan now required of all operators of public transportation--not just rail transit systems--in accordance with 49 U.S.C. 5329(d).

In the *NPRM*, *supra* at page 6368, the FTA states that proposed Part 673.3:

This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA's *Public Transportation Safety Program*, and reflect the specific safety objectives, standards, and priorities of each transit agency.

Therefore, staff recommends that the FTA's proposed rules provide specific language as to exactly when SSPPs will be replaced with TASPs, in order to avoid having conflicting requirements in effect at the same, or approximately the same, time.

V. "PUBLIC TRANSPORTATION AGENCY SAFETY PLAN" COMMENTS SUMMARY

In summary, comments reflecting CPUC staff experiences and recommendations may be useful to the FTA and, consequently, staff recommends that the CPUC submit comments in response to the *NPRM* as previously mentioned.

Docket No. FTA-2015-0017, RIN 2132-ZA04
(Proposed National Public Transportation Safety Plan)

RECOMMENDATION: The CPUC should file comments in response to the Notice of Availability of a proposed *National Public Transportation Safety Plan* released by the Federal Transit Administration (“FTA”) on February 5, 2016. Public comments must be filed by April 5, 2016.

BACKGROUND: As previously mentioned, Congress directed FTA to establish a comprehensive Public Transportation Safety Program NOA (“NOA”), which consists of several key elements: the *National Public Transportation Safety Plan*, authorized by 49 U.S.C. 5329(b); the Public Transportation Safety Certification Training Program, authorized by 49 U.S.C. 5329(c); the Public Transportation Agency Safety Plans, authorized by 49 U.S.C. 5329(d); and the State Safety Oversight Program, authorized by 49 U.S.C. 5329(e).

This NOA requests public comments on a proposed National Public Transportation Safety Plan (“NPTSP”), to implement the requirements of 49 U.S.C. § 5329(b). If adopted, the NPTSP will be the primary roadmap for all of FTA’s safety programs.

Like the NPRM, the NOA is part of a number of FTA actions to carry out the congressional mandate of MAP-21 and FAST Act.⁶ The CPUC will be affected by, has a direct interest in these laws and regulations, and has provided comments on the State Safety Oversight Program NPRM (FTA-2015-0003), Public Transportation Safety Program NPRM (FTA-2015-0009), and the Transit Asset Management NPRM (FTA-2014-0020).

SED has reviewed the proposed NPTSP, and recommends that the Commission authorize staff to prepare formal comments addressing the issues as outlined below for submittal in response to this NOA.

DISCUSSION AND RECOMMENDATIONS: Staff recommends the CPUC file comments on the following specific issues regarding the FTA’s proposed National Public Transportation Safety Plan.

I. DEFINITION OF UNLINKED PASSENGER TRIP

The NPTSP uses the term “unlinked passenger trip” several times without defining it. The American Public Transportation Association uses the following definition:

⁶ See n. 5 *supra* at p. 2.

Unlinked Passenger Trips is the number of times passengers board public transportation vehicles. Passengers are counted each time they board vehicles no matter how many vehicles they use to travel from their origin to their destination and regardless of whether they pay a fare, use a pass or transfer, ride for free, or pay in some other way.

Staff recommends the NPTSP include a definition of “unlinked passenger trip”. Staff further recommends providing the above definition to the FTA for its consideration.

II. SAFETY PERFORMANCE CRITERIA FOR FATALITIES AND INJURIES

On pages 40 and 41 of the proposed NPTSP⁷, the NPTSP discusses performance indicators of fatalities per unlinked passenger tips and injuries per unlinked passenger trips.

In California, RTAs are required to report to the CPUC the total distance their trains travel transporting passengers (referred to as “train miles”). This is a common practice in the industry. Train miles can be easily and accurately determined. In contrast, it is difficult to obtain accurate numbers of passengers transported using the proposed “unlinked passenger trips”. As anyone who has used public transportation systems in California can attest, many passengers get on-board without paying a fare (or other means of the system identifying a passenger has boarded), therefore making it difficult for the agencies to get an accurate number of passengers transported. Agencies make estimates based on surveys and other statistical tools. However, these numbers may deviate significantly from actual numbers during major events.

Consequently, staff recommends the NPTSP use travel miles (“train miles” for the rail industry) instead of unlinked passenger trips for the purpose of standardizing number of fatalities and injuries for establishing safety performance criteria.

III. SYSTEM RELIABILITY

On page 43, the NPTSP states:

... the category of *system reliability* is intended to measure the relationship between transit asset management practices and the safety of a public transportation system. The rate of vehicle failures in service, defined as mean distance between

⁷ NPTSP (Final) January 27, 2016 (v2), copy and paste the following URL address in your browser: <http://www.regulations.gov/#!documentDetail;D=FTA-2015-0017-0004>.

failures, is measured as revenue miles operated, divided by the number of failures. This is a measure of how well a fleet of transit vehicles (and the infrastructure on which it operates) is maintained and operated. FTA recognizes the diversity of the transit industry, and that agencies have varied equipment types, with varied rates of performance, so this measure allows agencies to develop safety performance targets that are specific to their own fleet type, age, operating characteristics, and mode of operation.

Staff recommends the NPTSP clearly state that “vehicle failure” refers to situations where the vehicle is unable to transport passengers, in contrast to other failures which may allow the vehicle to continue on its route. For example, if a door on one of the train cars fails to open at stations and remains closed, the train may continue to operate safely and passenger will simply need to use other doors to enter and exit the train. In contrast, if the braking system fails, the train cannot continue to safely transport passengers and must be taken out of service.

IV. BASELINE MERICS AND ANNUAL COMPARISONS

On pages 44 and 45, the NPTSP states:

Performance baselines may be established for individual transit agencies, for transit agency modes, and/or for the public transportation industry as a whole. After baseline metrics are stable for individual transit agencies or modes, the agencies or modes can select targets (metrics) for safety performance improvements. Performance should be measured at least annually by comparing actual performance metrics with targets and original baselines. As performance improves, baselines and targets may be updated. As targets are achieved, transit agencies may select different safety parameters and targets for improvement.

Many RTAs have different rail lines that were constructed decades apart and, as a result, they have different designs, safety features, and performance metrics. In general, the older lines generally have more problems than the newer lines.

Staff recommends the NPTSP require (or at a minimum recommend) that RTAs establish baselines for the different systems they operate when there is a considerable age and/or design difference between them.

**V. “NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN”
COMMENTS SUMMARY**

Because comments reflecting Staff experiences and recommendations may be useful to the FTA, staff recommends that the CPUC submit comments in response to the *NOA* as previously described.

Assigned Staff:

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